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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Joseph and Judy Zizlsperger,) Case No.
12 Plaintiffs,)
13 vs.) **COMPLAINT AND TRIAL BY JURY**
14 Maxwell & Morgan, PC,) **DEMAND**
15 Defendant.)

16 **NATURE OF ACTION**

17
18 1. This is an action brought under the Fair Debt Collection Practices Act
19 (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

20 **JURISDICTION AND VENUE**

21
22 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. §
23 1331.

24
25 3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where
26 the acts and transactions giving rise to Plaintiffs’ action occurred in this district, (where
27 Plaintiffs reside in this district), and/or where Defendant transacts business in this district.
28

PARTIES

4. Plaintiffs, Joseph and Judy Zizlsperger (“Plaintiffs”), are natural persons who at all relevant times resided in the State of Arizona, County of Maricopa, and City of Mesa.

5. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

6. Defendant, Maxwell & Morgan, PC (“Defendant”) is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. §1692a(5).

7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. Plaintiffs are natural persons obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

9. Plaintiffs’ obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes. Plaintiffs incurred the obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant.

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

1 11. Defendant obtained a judgment against Plaintiffs on December 17, 2009 for
2 the amount of \$1,124.73, plus costs and interest.

3
4 12. Defendant alleged that Plaintiffs owed amounts resulting from the
5 ownership of real property, to wit: a residential home located at 11111 West Citrus
6 Grove, Avondale, AZ 85392.

7
8 13. Specifically, Defendant alleged that Plaintiff owed the amount of \$318.73,
9 an amount representing homeowner's association fees due with regard to said residential
10 home.

11
12 14. Plaintiffs were divested of ownership of said residential property on March
13 5, 2004.

14 15. On March 12, 2010 Defendant filed an Application for Garnishment for
15 \$2,192.74 against Plaintiffs in Arizona Justice Court.

16
17 16. On April 5, 2010 Plaintiffs requested a formal hearing in objection to the
18 writ of garnishment. A hearing was held regarding Plaintiffs' objections on April 16,
19 2010 wherein the court reduced the garnishment rate from 25% of Plaintiff's wages to
20 15%.

21
22 17. As of July 16, 2010, Defendant had garnished Plaintiff Joseph Zizlsperger's
23 wages in the amount of \$2,192.74. (See Plaintiff's Earnings Statement of July 16, 2010
24 attached hereto as Exhibit A).

25
26 18. Defendant submitted a Report of Judgment Balance on October 13, 2010 in
27 which Defendant misrepresented that only \$1,971.90 was garnished from Plaintiffs. (See
28 Report of Judgment Balance attached hereto as Exhibit B)

1 19. Defendant further alleged that an additional \$1,906.90 of additional court
2 costs and fees as well as \$222.16 of additional interest accrued against Plaintiffs between
3 March 15, 2010 and October 13, 2010 for a total amount \$2,349.90 to be paid by
4 Plaintiffs.
5

6 20. Specifically, Defendant assessed \$960.00 to Plaintiff's alleged debt
7 predicated upon Defendant's attorneys fees resulting from its Defense of Plaintiff's
8 A.R.S. § 12-1598.07(E) objection to the writ of garnishment. Pursuant to § 12-
9 1598.07(E), Defendant is not entitled to attorney's fees absent a finding that the objection
10 was solely for the purpose of delay or harassment. (See Defendant's History Bill attached
11 hereto as Exhibit C)
12
13

14 21. The court hearing Plaintiff's objection failed to find that the objection was
15 brought for the purpose of delay or harassment.
16

17 22. Defendant was contacted by Plaintiff's counsel with respect to possible
18 violations of the Fair Debt Collection Practices Act.
19

20 23. Defendant assessed attorney's fees of \$1,187.50 related to its own defense
21 of Plaintiffs' claims under the FDCPA to Plaintiffs' account.
22

23 24. On December 7, 2010, Defendant submitted its Motion for Confirmation of
24 Reasonableness of Fees Awarded Pursuant to Judgment in which Defendant claimed that
25 the assessment of attorney's fees for work related to its own defense of Plaintiffs'
26 FDCPA claims was allowed.
27

28 25. Pursuant to 15 U.S.C. § 1692k(a)(3), an FDCPA defendant may be awarded
attorney's fees solely upon a finding that the claim was made in bad faith and for the

1 purpose of harassment, and no such finding was made with regard to Plaintiff's FDCPA
2 claim against Defendant.

3
4 26. Despite the Justice Court's Order that the garnishment was reduced to 15%
5 of wages, on or about February 9, 2011, Defendant sent Plaintiff Joseph Zizlsperger's
6 employer an order to garnish 25% of Plaintiff's wages and garnished Plaintiff's wages at
7 said improper rate. (See Garnishment Notification attached hereto as Exhibit D)

8
9 27. Defendant's actions constitute conduct highly offensive to a reasonable
10 person.

11
12 **COUNT I – VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

13 28. Plaintiffs repeat and re-allege each and every allegation contained above.

14 29. Section 1692e(2)(A) states that:

15
16 A debt collector may not use any false, deceptive, or
17 misleading representation or means in connection with the
18 collection of any debt. Without limiting the general
19 application of the foregoing, the following conduct is a
20 violation of this section:

21 * * *

22 (2) The false representation of—

23 (A) the character, amount, or legal status of any debt;

24 15 U.S.C. § 1692e(2)(A).

25 30. Defendant violated the FDCPA 15 U.S.C. §§ 1692e(2)(A), by falsely
26 representing to Plaintiffs that their alleged debt included attorneys' fees specifically
27 denied Defendant by A.R.S. § 12-1598.07(E), and by representing to Plaintiffs that their
28 alleged debt included attorneys' fees relating to Defendant's own defense of Plaintiff's
claims under the FDCPA, as detailed above.

1 31. Defendant further violated the FDCPA 15 U.S.C. §§ 1692e(2)(A), by
2 falsely representing on October 13, 2010 that only \$1,971.90 was garnished from
3 Plaintiffs, when in fact, Defendants had garnished \$2,192.74 from Plaintiffs' as of said
4 date.
5

6 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
7

- 8 a) Adjudging that Defendant violated the FDCPA;
- 9 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in
10 the amount of \$1,000.00;
- 11 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
- 12 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this
13 action;
- 14 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
15 allowed under the law;
- 16 f) Awarding such other and further relief as the Court may deem just and
17 proper.
18
19
20

21 **COUNT II – VIOLATION OF 15 U.S.C. § 1692e(10)**

22 32. Plaintiffs repeat and re-allege each and every allegation contained above.

23 33. Section 1692e(10) states that:
24

25 A debt collector may not use any false, deceptive, or
26 misleading representation or means in connection with the
27 collection of any debt. Without limiting the general
28 application of the foregoing, the following conduct is a
violation of this section:

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

15 U.S.C. § 1692e(10).

34. Defendant violated the FDCPA (15 U.S.C. §§ 1692e(10)), by falsely representing to Plaintiffs that their alleged debt included attorneys' fees specifically denied Defendant by A.R.S. § 12-1598.07(E), and by representing to Plaintiffs that their alleged debt included attorneys' fees relating to Defendant's own defense of Plaintiff's claims under the FDCPA, and by garnishing Plaintiff's wages at a rate above that set by court order, as detailed above.

35. Defendant further violated the FDCPA (15 U.S.C. §§ 1692e(10)), by falsely representing on October 13, 2010 that only \$1,971.90 was garnished from Plaintiffs, when in fact, Defendants had garnished

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FDCPA;
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;

1 f) Awarding such other and further relief as the Court may deem just and
2 proper.
3

4 **COUNT III – VIOLATION OF 15 U.S.C. § 1692f**

5 36. Plaintiffs repeat and re-allege each and every allegation contained above.

6 37. Section 1692e(10) states that: “A debt collector may not use unfair or
7
8 unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.

9 38. Defendant violated 15 U.S.C. § 1692f by falsely representing to Plaintiffs
10 that their alleged debt included attorneys’ fees specifically denied Defendant by A.R.S. §
11 12-1598.07(E), and by representing to Plaintiffs that their alleged debt included
12 attorneys’ fees relating to Defendant’s own defense of Plaintiff’s claims under the
13 FDCPA, and by garnishing Plaintiff’s wages at a rate above that set by court order, as
14 detailed above.
15
16

17 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- 18 a) Adjudging that Defendant violated the FDCPA;
19
20 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in
21 the amount of \$1,000.00;
22
23 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
24
25 d) Awarding Plaintiffs reasonable attorneys’ fees and costs incurred in this
26 action;
27
28 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
allowed under the law;

1 f) Awarding such other and further relief as the Court may deem just and
2 proper.
3

4 **COUNT IV – VIOLATION OF 15 U.S.C. § 1692f(1)**

5 39. Plaintiffs repeat and re-allege each and every allegation contained above.

6 40. Section 1692f(1) states:
7

8 A debt collector may not use unfair or unconscionable means
9 to collect or attempt to collect any debt. Without limiting the
10 general application of the foregoing, the following conduct is
11 a violation of this section:

12 (1) The collection of any amount (including any interest, fee,
13 charge, or expense incidental to the principal obligation)
14 unless such amount is expressly authorized by the
15 agreement creating the debt or permitted by law.

16 15 U.S.C. § 1692f(1).

17 41. Defendant violated 15 U.S.C. § 1692f(1) by collecting, or attempting to
18 collect from Plaintiffs attorneys' fees unauthorized by, and specifically denied, Defendant
19 by A.R.S. § 12-1598.07(E), and by collecting, or attempting to collect from Plaintiffs
20 attorneys' fees relating to Defendant's own defense of Plaintiff's claims under the
21 FDCPA, and by garnishing Plaintiff's wages at a rate above that set by court order, as
22 detailed above.

23 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
24

25 a) Adjudging that Defendant violated the FDCPA;

26 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in
27 the amount of \$1,000.00;

28 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;

- 1 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this
2 action;
3
4 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
5 allowed under the law;
6
7 f) Awarding such other and further relief as the Court may deem just and
8 proper.

9 **COUNT V - VIOLATION OF 15 U.S.C. § 1692e(4)**

10 42. Plaintiffs repeat and re-allege each and every allegation contained above.

11 43. Section 1692e(4) states:
12

13 A debt collector may not use any false, deceptive, or
14 misleading representation or means in connection with the
15 collection of any debt. Without limiting the general
16 application of the foregoing, the following conduct is a
17 violation of this section:

18 * * *

19 (4) The representation or implication that nonpayment of any
20 debt will result in the arrest or imprisonment of any person or
21 the seizure, garnishment, attachment, or sale of any property
22 or wages of any person unless such action is lawful and the
23 debt collector or creditor intends to take such action.

24 15 U.S.C. § 1692e(4)

25 44. Defendant violated the 15 U.S.C. §§ 1692e(4) by garnishing Plaintiff's
26 wages at a rate above that set by court order, as detailed above.

27 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- 28 a) Adjudging that Defendant violated the FDCPA;

- 1 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in
2 the amount of \$1,000.00;
3
4 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
5
6 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this
7 action;
8 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
9 allowed under the law;
10 f) Awarding such other and further relief as the Court may deem just and
11 proper.

12
13 **COUNT VI - - VIOLATION OF 15 U.S.C. § 1692e(5)**

14 45. Plaintiffs repeat and re-allege each and every allegation contained above.

15
16 46. Section 1692e(5) states:

17 A debt collector may not use any false, deceptive, or
18 misleading representation or means in connection with the
19 collection of any debt. Without limiting the general
20 application of the foregoing, the following conduct is a
21 violation of this section:

22 * * *

23 (5) The threat to take any action that cannot legally be taken
24 or that is not intended to be taken.

25 15 U.S.C. § 1692e(5)

26 47. Defendant violated 15 U.S.C. § 1692e(5) by threatening to garnish
27 Plaintiff's wages at a rate above that set by court order, as detailed above.

28 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FDCPA;
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

Plaintiffs are entitled to and hereby demand a trial by jury.

Respectfully submitted this 12th day of July, 2011

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